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09/776,936	12/22/1998	Scott Miller	BAYER 6 P1	8682
<div>7590 12/04/2008</div> <div>MILLEN, WHITE, ZELANO & BRANIGAN, P.C.</div> <div>Arlington Courthouse Plaza I</div> <div>Suite 1400</div> <div>2200 Clarendon Boulevard</div> <div>Arlington, VA 22201</div>				
<div>EXAMINER</div> <div>KUMAR, SHAILENDRA</div>				
<div>ART UNIT</div> <div>1621</div>		<div>PAPER NUMBER</div>		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: SCOTT MILLER, MARTIN OSTERHOUT,
JACQUES DUMAS, UDAY KHIRE,
TIMOTHY BRUNO LOWINGER, BERND RIEDI,
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MARTHA RODRIGUEZ, MING WANG,
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CATHERINE BRENNAN

Application No. 09/776,936
Technology Center 1600

Mailed: December 4, 2008

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 14, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the

application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

PRIOR ORDER FOR RETURN

A prior “Order Returning Undocketed Appeal to Examiner” was mailed on July 23, 2007, wherein the Examiner was instructed that corrections were required. A review of the file finds that the required corrections have not been made or have not been made in entirety. The matters still requiring attention prior to docketing are identified below.

Claims 28-33 were identified as pending and rejected in the Final Rejection (coversheet only) mailed May 3, 2005, however, these claims are not identified in the body or explanation of the rejection that follows the cover sheet. The Appeal Brief filed October 16, 2006, identifies these claims (28-33) as being on appeal and rejected under 35 USC 112 1st paragraph and again rejected under 35 USC 103(a). However, the Examiner does not address the status of these claims in the Supplemental Examiner’s Answers mailed October 19, 2007 (or as a matter of record the Examiner’s Answer mailed December 21, 2006 and/or the Examiner’s Answer mailed February 27, 2007, does not address the rejection of these claims either).

Claim 20 was rejected under 35 USC 103(a) as being unpatentable over Widdowson et al in the Supplemental Examiner's Answer mailed October 19, 2007 (and as a matter of record, the Examiner's Answer mailed December 21, 2006 and the Examiner's Answer mailed February 27, 2007 also reject claim 20 under 35 USC 103(a)). However, claim 20 was cancelled in an Amendment filed September 1, 2006, and entered by the Examiner in an Advisory Action mailed October 6, 2006.

Clarification as to the status of Claims 20 and 28-33 is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) vacate the Supplemental Examiner's Answer mailed October 19, 2007;
- 2) issue a Substitute Examiner's Answer addressing the status of Claims 20 and 28-33;
- 3) include the approval of the TC Director or his/her designee (as may be required for any new grounds of rejection); and
- 4) for such further action as may be appropriate.

Application No. 09/776,936

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/dpv

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